

OPEN MEETING ITEM

COMMISSIONERS
BOB STUMP – Chairman
GARY PIERCE
BRENDA BURNS
BOB BURNS
SUSAN BITTER SMITH



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ARIZONA CORPORATION COMMISSION
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DATE: OCTOBER 16, 2014

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Arizona Corporation Commission

DOCKETED

DOCKET NOS.: W-02450A-06-0626 AND SW-20422A-06-0566

OCT 16 2014

TO ALL PARTIES:

ORIGINAL

DOCKETED BY

Enclosed please find the recommendation of Administrative Law Judge Sasha Paternoster. The recommendation has been filed in the form of an Order on:

WATER UTILITY OF GREATER TONOPAH, INC. AND
HASSAYAMPA UTILITY COMPANY, INC.
(ORDER EXTENDING TIME DEADLINE ORDERED IN
DECISION NOS. 70357 AND 71430)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and thirteen (13) copies of the exceptions with the Commission's Docket Control at the address listed below by **4:00** p.m. on or before:

OCTOBER 27, 2014

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Open Meeting to be held on:

NOVEMBER 5, 2014 and NOVEMBER 6, 2014

For more information, you may contact Docket Control at (602) 542-3477 or the Hearing Division at (602) 542-4250. For information about the Open Meeting, contact the Executive Director's Office at (602) 542-3931.

JODI JERICH
EXECUTIVE DIRECTOR

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This document is available in alternative formats by contacting Shaylin Bernal, ADA Coordinator, voice phone number 602-542-3931, E-mail SABernal@azcc.gov.

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 **COMMISSIONERS**

3 BOB STUMP – Chairman
4 GARY PIERCE
5 BRENDA BURNS
6 BOB BURNS
7 SUSAN BITTER SMITH

8 IN THE MATTER OF THE APPLICATION OF
9 WATER UTILITY OF GREATER TONOPAH,
10 INC. FOR APPROVAL OF AN EXTENSION OF
11 ITS CERTIFICATE OF CONVENIENCE AND
12 NECESSITY TO PROVIDE WATER UTILITY
13 SERVICE IN MARICOPA COUNTY, ARIZONA.

DOCKET NO. W-02450A-06-0626

10 IN THE MATTER OF THE APPLICATION OF
11 HASSAYAMPA UTILITY COMPANY, INC. FOR
12 APPROVAL OF AN EXTENSION OF ITS
13 CERTIFICATE OF CONVENIENCE AND
14 NECESSITY TO PROVIDE WASTEWATER
15 UTILITY SERVICE IN MARICOPA COUNTY,
16 ARIZONA.

DOCKET NO. SW-20422A-06-0566

DECISION NO. _____

ORDER EXTENDING TIME
DEADLINE ORDERED IN DECISION
NOS. 70357 AND 71430

14 Open Meeting
15 November 5 and 6, 2014
16 Phoenix, Arizona

17 **BY THE COMMISSION:**

18 * * * * *

19 Having considered the entire record herein and being fully advised in the premises, the
20 Arizona Corporation Commission (“Commission”) finds, concludes, and orders that:

21 **FINDINGS OF FACT**

22 1. On May 16, 2008, the Commission issued Decision No. 70357, which conditionally
23 approved the applications of Hassayampa Utility Company (“HUC”) and Water Utility of Greater
24 Tonopah (“WUGT”; collectively, “the Utilities”) to extend their respective Certificates of
25 Convenience and Necessity (“CC&N”) to provide water and wastewater utility services in various
26 parts of Maricopa County, Arizona. The Decision conditionally granted approval for the Utilities to
27 extend their service areas to include an additional 22,000 acres.

28 ...

2. On April 30, 2009, the Utilities filed a Motion for an Extension of Time to comply with the conditions set forth in Decision No. 70357 as follows:

Company	Item Description	Original Due Date
WUGT	ADWR Designation of Assured Water Supply for the first subdivision or a Certificate of Assured Water Supply for the first subdivision	May 16, 2010
WUGT	Approval of Construction from MCESD for the initial water plant facilities, including production, storage and water distribution system to serve the initial phase of the development	May 16, 2010
HUC	Approval to Construct from MCESD for the sewer tie-in between Water Reclamation Facility Campus No. 1 and the initial phase of the development	April 30, 2009
HUC	Aquifer Protection Permit ("APP") for the Water Reclamation Facility Campus No. 1 needed to serve the initial phase of the development	April 30, 2009
HUC	Approval issued by ADEQ and Maricopa County for the installation of purple pipe for the initial phase of the development in the extension area	May 16, 2010

The Utilities' extension request stated that development in the extension area had been severely impacted by the economic crisis; the Hassayampa Ranch Water Reclamation Facility ("WRF") Campus No. 1 had not been constructed and it would not be needed for several more years and the interconnect between Phase 1 of the development and the HUC WRF Campus No. 1 would not be needed for several more years; and it is not prudent for the Utilities to incur the costs for an interconnect at this time. The Utilities also requested extensions of time to comply with the filing of the Approval of Construction ("AOC") for the initial water plant facilities; and the APP for the WRF Campus No. 1. The Utilities requested an extension of time, until December 31, 2012, to meet the compliance items outlined above.

3. On June 25, 2009, Staff filed a Memorandum expressing concern that development in the extension area may be prolonged or may never happen. Based on the Utilities' admission that development is not imminent for several more years; the lack of evidence demonstrating a continuing

1 need for service in the extension area; the excessive length of time requested by the Utilities' for the
2 extension of time; and no apparent need for service in the foreseeable future; Staff recommended
3 denial of the Utilities request for an extension of time. Further, Staff stated that HUC should be on
4 notice that it was out of compliance with the Commission and both HUC and WUGT must satisfy the
5 required compliance items or present further evidence to the Commission to substantiate its request
6 for the extension of time.

7 4. On July 15, 2009, the Utilities filed a Reply in Support of Motion for Extension of
8 Time. The Utilities' reply stated that although Staff requested "renewed requests for service," Staff
9 does not cite any authority to support "the idea that renewed requests for service must be submitted
10 with motions for extension of time." The reply cited other Decisions, where updated requests for
11 service were not submitted with a motion for extension of time.¹ However, the reply did include four
12 updated requests for service purportedly representing all of the water extension area, and the vast
13 majority of the wastewater and recycled water extension area. Further, the reply stated that Staff's
14 recommendation that the Utilities build the facilities required in Decision No. 70357 would place an
15 unnecessary financial burden on the Utilities and their ratepayers at this time. The reply renewed the
16 Utilities' request for an extension of time to comply until December 31, 2012.

17 5. On September 11, 2009, Staff filed a Memorandum in response to the Procedural
18 Order issued August 18, 2009 that directed Staff to file a response to the Utilities' updated
19 information. Staff stated that in reviewing the updated requests for service submitted by the Utilities,
20 they did not contain specific dates as to when development will take place; they did not define an
21 apparent need for service in the near future; and that no request for service was submitted for the
22 Desert Whisper development. Staff further stated that it was aware that "due to a downturn in the
23 economy many developers have gone bankrupt and developments have been abandoned across the
24 state," and that although the developer letters submitted by the Utilities indicated that the approval
25 process is on-going, they also state that development may not take place for several years. Staff
26 continued to recommend denial of the Utilities' request for an extension of time. In the alternative,

27 _____
28 ¹ See Arroyo Water Co., Decision No. 70974 (May 5, 2009); Gold Canyon Sewer Corp., Decision No. 71101 (June 5, 2009); Baca Float Water Co., Decision No. 71170 (June 30, 2009).

1 Staff recommended that the Commission issue the Utilities an Order Preliminary requiring full
2 compliance with the outstanding compliance items by December 31, 2012, before a final Order is
3 issued granting the CC&N extension.

4 6. On September 30, 2009, the Utilities filed a Request for Procedural Conference and
5 Motion to Set Hearing. The Utilities stated that their request for an extension of time is not a "run-of-
6 the-mill" compliance matter and that the Utilities' request presents important policy issues. The
7 Utilities stated that Staff's recommendation failed to properly consider the need for long-term
8 planning; promotion of responsible and sustainable water management; and did not consider the
9 unique situation in the Lower Hassayampa Sub-Basin. The Utilities requested a procedural
10 conference as they believed that Staff's recommendation was unprecedented and based on erroneous
11 assumptions.

12 7. According to the Utilities' request, the CC&N extension area includes several large
13 developments, located in the Lower Hassayampa Sub-basin. The Utilities asserted that:

- 14 ◦ long-term planning for the extensive use of recycled water had been conducted
15 for the extension area;
- 16 ◦ the size of the proposed Belmont project in the extension area will make the
17 use of purple pipe a "national leader;"
- 18 ◦ the developers' use of recycled water could make Arizona a leader in
19 sustainable water use; and
- 20 ◦ it is critical for the Utilities to maintain its close working relationship with the
21 Town of Buckeye in order to continue the on-going regional planning in the
22 area.

23 The Utilities' request further pointed out that this is the first request for an extension of time related
24 to Decision No. 70357; the requested extension of time is only a little more than two years away;
25 Global has spent more than \$1 million on permitting in the extension area; and a hearing to resolve
26 the issues surrounding the request for an extension of time was needed.

27 8. Staff recommended denial of the Utilities request for an extension of time or, in the
28 alternative, granting the Utilities an Order Preliminary. In light of the economic downturn and its

1 impact on development, the Commission issued Decision No. 71430 (December 8, 2009) which
2 ordered that all compliance deadlines in Decision No. 70357 be extended until December 31, 2012.

3 9. On December 31, 2012, the Utilities filed a Motion for Extension of Time ("Motion").
4 The Motion sought an extension of time until December 15, 2015 to comply with the conditions in
5 Decision No. 70357 with exception to the condition relating to the installation of purple pipe. The
6 Motion stated the development in the requested extension area has been severely impacted by the
7 economic crisis. The Motion included updated requests for service for three of the five developments
8 within the extension area, and indicated the Utilities would provide service letters for Copperleaf and
9 Sierra Negra Ranch, LLC in a later filing.

10 10. On January 8, 2013, the Utilities docketed an updated request for service for the
11 Copperleaf development.

12 11. On March 15, 2013, the Utilities filed an Amendment to Motion for Extension of
13 Time in which it stated it had failed to include a request for an extension of the purple pipe condition
14 in its original Motion and asked that this condition also be extended to the proposed December 15,
15 2015 date.

16 12. On February 7, 2014, the Utilities filed the final ownership letter relating to the
17 extension area for Sierra Negra Ranch, LLC.

18 13. On June 15, 2015, the Utilities e-mailed Staff, requesting to further amend the
19 application for extension of time to extend the proposed due date from December 15, 2015 to
20 December 15, 2016.²

21 14. On August 14, 2014, Staff filed a Memorandum stating that it does not object to the
22 Utilities' request for an extension of time to comply with Decision No. 70357. However, Staff
23 recommends the amended due date be changed to December 31, 2016 and that no further extensions
24 of time be granted. Staff also noted that the Utilities' Motion was docketed on the same day as the
25 pending due date for the compliance requirements and did not include all the ownership letters at the
26 time of docketing. Therefore, Staff recommends that the Utilities be required to file any further
27

28 ² Staff Report at p. 2.

1 requests for extensions of time, if permitted, at least 90 days prior to the existing due date and include
2 100 percent of the ownership letters when the application for extension of time is originally filed.

3 15. Based on the letters from 100 percent of the property owners in the transfer area
4 demonstrating a continuing need for service and the effect of the economy on development in the
5 extension area, we find that the Utilities' request for an extension of time to comply with Decision
6 No. 70357 is reasonable and should be granted.

7 16. Staff's recommendations requiring the Utilities to file future requests for extension of
8 time at least 90 days prior to the existing due date and to include 100 percent of the ownership letters
9 when the application for extension of time is originally filed are reasonable.

10 17. Further, although we are not adopting Staff's recommendation that no further time
11 extensions should be granted for compliance with Decision No. 70357, we will put the Utilities on
12 notice that any further requests for extension of time to comply must demonstrate extraordinary
13 circumstances exist that warrant additional time.

14 CONCLUSIONS OF LAW

15 1. Water Utility of Greater Tonopah and Hassayampa Utility Company are public service
16 corporations within the meaning of Article XV of the Arizona Constitution and A.R.S. §§40-281 and
17 40-282.

18 2. The Commission has jurisdiction over Water Utility of Greater Tonopah, Hassayampa
19 Utility Company, and the subject matter described herein.

20 3. Water Utility of Greater Tonopah's and Hassayampa Utility Company's request for an
21 extension of time to comply with the requirements outlined in Decision Nos. 70357 and 71430, is
22 reasonable and should be granted.

23 ORDER

24 IT IS THEREFORE ORDERED that Water Utility of Greater Tonopah and Hassayampa
25 Utility Company are hereby granted an extension of time, until December 31, 2016, to comply with
26 all compliance deadlines in Commission Decision Nos. 70357 and 71430.

27 ...
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IT IS FURTHER ORDERED that Water Utility of Greater Tonopah and Hassayampa Utility Company shall file any future request for an extension of time at least 90 days prior to the existing due date.

IT IS FURTHER ORDERED that Water Utility of Greater Tonopah and Hassayampa Utility Company shall include 100 percent of the ownership letters with any additional request for an extension of time.

IT IS FURTHER ORDERED that Water Utility of Greater Tonopah and Hassayampa Utility Company are hereby put on notice that any additional requests for extensions of time shall demonstrate extraordinary circumstances.

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

CHAIRMAN

COMMISSIONER

COMMISSIONER

COMMISSIONER

COMMISSIONER

IN WITNESS WHEREOF, I, JODI JERICH, Executive Director of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this _____ day of _____ 2014.

JODI JERICH
EXECUTIVE DIRECTOR

DISSENT _____

DISSENT _____
SP:ru

1 SERVICE LIST FOR:

WATER UTILITY OF GREATER TONOPAH, INC.
and HASSAYAMPA UTILITY COMPANY, INC.

2
3 DOCKET NOS.:

W-02450A-06-0626 and SW-20422A-06-0566

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